

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

FILED
DISTRICT COURT
DIV.

2014 JAN -9 P 1:20

C. Robinson

TERRENCE BIGGERS,

Plaintiff,

v.

CIVIL ACTION NO.: CV612-115

EARL TOPPINGS and
RICHARD BUNCH,

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff, who was formerly incarcerated at Smith State Prison in Glennville, Georgia, filed a cause of action pursuant to 42 U.S.C. § 1983, asserting that Defendants violated his constitutional rights. Defendants have filed a Motion to Dismiss the Complaint for Plaintiff's Failure to Prosecute, as renewed.

Defendants contend that Plaintiff has failed to comply with this Court's Order dated August 29, 2013, and his Complaint should be dismissed. In that Order, the undersigned directed Plaintiff to pay \$10.00 to the Clerk of Court on or before the 15th of every month until his entire \$350.00 filing fee is paid in full. The undersigned also directed Plaintiff to make his initial filing fee payment on or before September 15, 2013. (Doc. No. 47). Defendants filed their initial Motion to Dismiss, pursuant to Federal Rule of Civil Procedure 41(b), and stated that this Rule allows a defendant to move for the dismissal of a cause of action based on the plaintiff's failure to prosecute, to comply with the Federal Rules, or to comply with an order of a court. The undersigned entered

another Order on November 4, 2013, and advised Plaintiff that he was to pay the Clerk of Court the past due amount of \$20.00 plus \$10.00 by November 15, 2013, to bring his balance current. Plaintiff was also advised that his failure to comply with the November 4, 2013, Order and the undersigned's August 29, 2013, Order would result in the dismissal of his case, without prejudice. (Doc. No. 52). Plaintiff paid the \$30.00 on November 18, 2013, which was applied to his balance on November 25, 2013, after Plaintiff corrected a filing deficiency. (Dkt. Entries dated November 4, 18, and 25, 2013). In the meantime, Defendants renewed their Motion to Dismiss. Plaintiff failed to file a Response to Defendants' original Motion or their renewed Motion. Defendants' Motion to Dismiss, as renewed, should be **GRANTED** as unopposed.

In addition, this Court can dismiss a cause of action for want of prosecution for a party's "[w]illful disobedience or neglect of any order of the Court" or based on a party's "failure to prosecute a civil action with reasonable promptness." L.R. 41.1(b)&(c). Plaintiff has failed to comply with the Court's Orders of August 29, 2013, and November 4, 2013. Plaintiff was advised by Order dated November 4, 2013, that his failure to comply with the Court's Order would result in the dismissal of his case. Plaintiff has not sent any additional monies to the Clerk of Court since his November 2013 posting. In addition, Plaintiff has not filed any pleading with the Court since August 22, 2013. (Doc. No. 45). Defendants' Motion should be **GRANTED** for this reason, too.

CONCLUSION

Based on the foregoing, it is my **RECOMMENDATION** that Defendants' Motion to Dismiss be **GRANTED** and that Plaintiff's Complaint be **DISMISSED**, without prejudice.

SO REPORTED and **RECOMMENDED**, this 9th day of January, 2014.



JAMES E. GRAHAM
UNITED STATES MAGISTRATE JUDGE